IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4001 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHIRUBHAI LADHABHAI

Versus

MUKESHBHAI VALLABHBHAI HIRAPARA

Appearance:

1. Special Civil Application No. 4001 of 1998

MR MUKESH H RATHOD for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/04/2004

ORAL JUDGEMENT

The limited prayer in this petition is that the award of the Labour Court to the extent it denies payment of 50% of backwages is erroneous and it is

required to be quashed and set aside.

1.1. According to the petitioner, he was working as labourer for many years with the respondent - concern. He had rendered satisfactory service and there was no reason for terminating his service by the respondent. However, that was done with effect from 20th September, 1986. He, therefore, raised dispute. Ultimately, the said dispute was referred to the Labour Court for adjudication.

1.2. Before the Labour Court also the petitioner raised the same averments and further contended that he was being exploited by the respondent - concern since, he was required to work for more than eight hours in a day. Ultimately, the workers got united and raised objections to their exploitation by the respondent. That was not liked by the respondent and, therefore, the service was terminated. In the proceedings before the Labour Court, it is stated by the other side that the respondent was duly served with the notice, but he had chosen not to appear before the Labour Court and defend his case. Opportunity to both the sides to lead respective evidence was granted. The petitioner led appropriate evidence, but the respondent did not lead any evidence and remained absent.

1.3. Since the averments of the petitioner remained uncontroverted, the Labour Court partly allowed the Reference holding that the termination of service was bad in law. However, during the course of the hearing, it came to the notice to the Labour Court that the concern in which the petitioner worked had been closed. The Labour Court, therefore, did not pass any direction for reinstatement. Further on the question of award of backwages, the Labour Court also held that though the petitioner had stated on oath that he was out of job, and had remained without employment all throughout, but he had failed to show any evidence at which place had he tried for employment and hence he was entitled to receive only 50% of the backwages. The said award is dated 30th August, 1997.

2. Mr. Mukesh Rathod learned advocate appearing for the petitioner has submitted that there is no justification for the Labour Court to direct 50% of the backwages. According to him, the reasons given for denying is not just and proper and, therefore to that extent, the award requires to be quashed.

2.1. The respondent though served have chosen not to

appear before this Court.

3. Having gone through the record of the petition and having carefully considered the submissions advanced by Mr. Rathod, it is clear that whatever the averments that were raised by the petitioner before the Labour Court had remained uncontroverted and since the respondent had chosen to remain absent before the Labour Court, in such circumstances, when the petitioner had stated on oath that he had remained unemployed all throughout, and when that fact was not at all controverted, the Labour Court ought to have accepted the same. Merely because, the petitioner had failed to name the places at which he had made attempts for obtaining job, it does not mean that he had not made such attempts. When the petitioner was out of job, he would certainly try to generate some income for himself as well as for his family, but when evidence is that he had not succeeded and he had remained unemployed, there was no earthly reason for the Labour Court to accept that version.

In the circumstances, the said finding of the Labour Court is not legal and proper and deserves to be set aside. In view of the aforesaid, this petition is, required to be allowed. The respondent is directed to pay 100% backwages to the petitioner from the date of the termination of the service.

The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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